

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

3 -----x  
4 FEDERAL TRADE COMMISSION,,  
5

6 Plaintiff,  
7

8 v.  
9

20-CV-4432 (LAK)

10 RCG ADVANCES, *et al.*,  
11

12 Defendants.  
13

Order to Show Cause

14 -----x  
15

New York, N.Y.

July 20, 2022

4:00 p.m.

16 Before:  
17

18 HON. LEWIS A. KAPLAN,  
19

District Judge

20 APPEARANCES (Via Microsoft Teams)  
21

22 FEDERAL TRADE COMMISSION  
23

24 BY: GREGORY A. ASHE  
25

JULIA EMMET HEALD

JOSEPH MURE, JR. AND ASSOCIATES

Attorneys for Defendant RCG

BY: ANTHONY VARBERO

J. IANDOLO LAW PC

Attorneys for Defendant Giardina

BY: JEREMY IANDOLO

KLUGER KAPLAN

Attorneys for Defendant RCG

BY: ALAN J. KLUGER

MARISSA A. REICHEL

TERRI MEYERS

## APPEARANCES (Continued)

MICHAEL DiBENEDETTO

Attorney for Defendant Braun

THOMAS HARVEY

Attorney for Defendant Ram Capital

WELTZ KAKOS GERBI WOLINETZ VOLYNSKY LLP

Attorneys for Intervenor

BY: IRWIN WELTZ

1 (Case called)

2 THE LAW CLERK: Federal Trade Commission, are you  
3 ready?

4 MR. ASHE: Yes.

5 THE LAW CLERK: Defendants are you ready?

6 MR. KLUGER: We are, your Honor.

7 THE COURT: All right.

8 THE LAW CLERK: Proposed intervenors, are you ready?

9 MR. WELTZ: Yes. Thank you.

10 THE COURT: Mr. Weltz, you're up.

11 MR. WELTZ: Thank you, your Honor.

12 THE COURT: Don't spend too much time on intervention.  
13 Talk to me about what is really going on here, please.

14 MR. WELTZ: Sure. Thank you, your Honor.

15 So, in plain terms, the third-party intervenor, which  
16 is Broad Street, is in simplest terms a hedge fund in various  
17 different affiliated entities.

18 As I understand it, RCG Advances is a limited partner  
19 in the Broad Street hedge fund, and there are basically two  
20 subfunds within that fund that RCG Advances is invested in.  
21 One is a securities account or a securities fund, which is  
22 noted as F1, and the other is a real estate fund with respect  
23 to ongoing real estate projects, and that's known as R2.

24 THE COURT: Now, let me interrupt with a question  
25 here.

1           With respect to R1, the subfund holds, as I understand  
2 it, all publicly traded liquid securities, right?

3           MR. WELTZ: As I understand it, that is correct. But  
4 my understanding is also that there is a fair amount that is  
5 not actively trading, and I also got further gloss today that  
6 it also involved synthetics and derivatives.

7           As you would imagine, it is a hedge fund, and there  
8 are credit facilities and they try to take advantage of things  
9 like leverage as much as they can.

10          THE COURT: Well, that is not exactly what your papers  
11 said.

12          MR. WELTZ: I understand that that was not included,  
13 your Honor.

14          THE COURT: Well, it is more than that. Your papers  
15 said they were all publicly traded securities.

16          MR. WELTZ: I think that's accurate. The gloss I am  
17 putting on is that there is a layer of derivatives and  
18 synthetics that are involved in the trading strategy.

19          THE COURT: Those presumably can be unwound also.  
20 Yes?

21          MR. WELTZ: Presumably at some cost and at some impact  
22 as well on the partnership and the limited partners.

23          THE COURT: What percentage of the net asset value of  
24 R1 is stuff that is publicly traded in the sense that General  
25 Motors is publicly traded.

1 MR. WEITZ: And the --

2 THE COURT: Pardon?

3 MR. WELTZ: I'm sorry, your Honor. I didn't mean to  
4 interrupt you.

5 THE COURT: That is all right. Go ahead.

6 MR. WELTZ: My understanding is they are all publicly  
7 traded. So I don't have a breakdown specifically whether or  
8 not it's 10 percent GE or 20 percent technology. I understand  
9 that it is a lot in technology, but they are publicly traded.  
10 You are correct.

11 THE COURT: Yes. But, look, part of your position  
12 here is that there would be some damage to the hedge fund --  
13 and I'm focused specifically now on R1 -- if an additional  
14 liquidation of the interests of RCG were to take place.

15 I came onto the line having read your papers and  
16 thinking it was all publicly traded liquid securities, and  
17 therefore that there would be no disruption at all in  
18 liquidating as much as was needed to take RCG out of R1 at  
19 least. And now you are telling me a whole different story, but  
20 you --

21 MR. WELTZ: No, your Honor.

22 THE COURT: Excuse me. You are not telling me to what  
23 extent the different story is really reality.

24 MR. WELTZ: I understand, your Honor, and I apologize.  
25 But you are correct, they are all publicly traded securities.

1           THE COURT: Okay. So where we are is they're publicly  
2 traded securities. There is an unsupported assertion that  
3 unwinding enough of them to liquidate the RCG interest in R1  
4 would create a problem, but we have no idea whether that's  
5 really true and how big a problem it would create.

6           That's where we are, right?

7           MR. WELTZ: Yes, your Honor.

8           As stated in Mr. Baldassarra's affidavit, there would  
9 be an impact globally. But I think you're right, a hundred  
10 percent, that the bigger impact is in R2, which is the real  
11 estate fund.

12          THE COURT: All right. Let's go on to that.

13          MR. WELTZ: So the real estate, which is R2 -- the  
14 securities is F1 -- the R2 consists, as I understand it, of  
15 ongoing private and illiquid real estate projects that have not  
16 yet been completed. I believe that the account statement has  
17 those valued at about \$4 million.

18          THE COURT: Counsel, what does it mean to say that  
19 they're ongoing projects? Does this mean that there's  
20 construction going on as we speak?

21          MR. WELTZ: I think it is more than one investment.  
22 It's multiple real estate investments, and I believe they're in  
23 various different stages of their projects. But my  
24 understanding is they have not yet, the projects have not yet  
25 completed, and they're not ready to be sold and/or liquidated.

1 THE COURT: What is a "project" for this purpose?

2 MR. WELTZ: A project would be, for example --

3 THE COURT: Is it construction of a new structure?

4 MR. WELTZ: I believe the investment in real estate  
5 would include that, would include building new structures,  
6 among other things.

7 THE COURT: And what else might it include?

8 MR. WELTZ: I don't know specifically beyond that  
9 their investments, they buy property, they build on the  
10 property, and that is what the focus of R2 is, real estate  
11 projects, buying, developing, things of that nature.

12 THE COURT: Might it include vacant real estate that  
13 they bought as an investment or for future use?

14 MR. WELTZ: It could possibly include that, your  
15 Honor. I don't know the full range of their activity.

16 THE COURT: Okay. All right.

17 Go on.

18 MR. WELTZ: So really the crux here of the issue is  
19 that with respect to F1, which is the securities account, or  
20 the publicly traded securities I should say, there are  
21 redemption restrictions in each calendar year where the  
22 investors are only permitted to redeem 50 percent of the  
23 account value.

24 As we pointed out in our papers, that 50 percent has  
25 already been wired out to RCB, which is about 1.3 or so million

1 dollars I believe on or about April 22, 2022.

2 With respect to the real estate subfund, which is R2,  
3 there is a lockup period that still is in effect, which I think  
4 there was a date of January 2023, but it is ultimately in the  
5 manager's discretion when that lockup ends, and there can be no  
6 redemptions at this point under the governing special limited  
7 partnership agreement and the notices we have provided to your  
8 Honor.

9 So, when faced with, you know, the order, our  
10 difficulty here is that my clients are seeking to stand on  
11 their contractual rights here that no further redemptions for  
12 F1 can be had in calendar year 2022, because we have already  
13 wired out one --

14 THE COURT: The trouble is your client has no  
15 contractual rights either with the Court or with the Federal  
16 Trade Commission.

17 MR. WELTZ: Understood, your Honor.

18 It would be vis-a-vis obviously the limited partner,  
19 which is RCG in this case. So really that's the nub of the  
20 dispute, whether or not we are going to be able to protect our  
21 contractual interests or something else.

22 THE COURT: I believe I read this afternoon that the  
23 guy who made this investment on behalf of RCG is or was at the  
24 time connected with your fund.

25 Is that true?



1 MR. WELTZ: I saw that, your Honor, and I did see the  
2 website so I presume that what is on the website is accurate,  
3 if you're referring to Mr. Feingold.

4 THE COURT: Yes.

5 So this agreement into which he entered, if in fact  
6 the case is that he did it in circumstances where there was an  
7 undisclosed manifest conflict of interest between his  
8 obligation to RCG and his interest in the fund, may very well  
9 be voidable.

10 MR. WELTZ: That is fair, your Honor. And my  
11 understanding just from looking at the agreement now was that  
12 Mr. Feingold had the authority to make various investments, and  
13 I think there's a disclosure about potentially there could be  
14 conflicts. And my understanding is also that this relationship  
15 has been going on for quite some time.

16 THE COURT: All right.

17 Anything else from you?

18 MR. WELTZ: Not on the just general factual  
19 background, your Honor, which I think is what you wanted to  
20 hear from me.

21 THE COURT: Well, I want to hear whatever else you  
22 have to say as to why I ought to grant the relief you are  
23 asking for.

24 MR. WELTZ: Sure.

25 So, your Honor, I think, look, the Broad Street Fund

1 is somewhat in a difficult position because we are obviously  
2 unrelated to the main underlying proceeding here, the  
3 underlying case, the settlement. And the Court does, according  
4 to the settlement with the FTC, retain jurisdiction over  
5 elements of that agreement.

6 So really our only recourse when we are staring down  
7 the barrel of an order signed by your Honor is to take some  
8 action. The action that we have taken is to come in and say,  
9 look, essentially we are defending this, because, as set forth  
10 in the FTC and the RCG motion, which is ECF 137 they note there  
11 is a dispute here. They don't really say what the dispute is,  
12 but obviously if it was as one sided as being made out in the  
13 papers that I received an hour or so ago, you know, it wouldn't  
14 be a dispute. It would be just one sided.

15 So from my perspective I think we would be intervening  
16 here as a defendant and basically responding to the claim that  
17 RCG can liquidate these funds and, our response would be to  
18 file either some type of jurisdictional motion, because the  
19 relevant limited partnership agreement includes a forum  
20 selection clause and/or ask your Honor to rule on whether or  
21 not my clients are correct or incorrect.

22 THE COURT: I am just curious about how anybody  
23 selected Luxembourg.

24 MR. WELTZ: I understand a little bit, and I could  
25 give you my understanding of it. Apparently, and I didn't know

1 this either, your Honor, apparently Luxembourg is an extremely  
2 popular place to set up hedge fund structures such as this. I  
3 had heard that it is something like the third most popular  
4 place because of their various different regulations and so  
5 forth.

6 So apparently, unbeknownst to me, Luxembourg is a  
7 popular place to set these types of things up. So that is I  
8 think how Luxembourg gets into the picture here.

9 THE COURT: And a very popular place, I am sure, for  
10 major financial litigation.

11 MR. WELTZ: I don't know about that, your Honor, for  
12 sure. I have never litigated there. But perhaps there is  
13 always a first for everything.

14 THE COURT: Did you ever meet anybody who did?

15 MR. WELTZ: I can't say I have, your Honor.

16 THE COURT: All right.

17 Mr. Verbaro.

18 MR. VERBARO: Yes, your Honor.

19 MR. KLUGER: Would you like me to address the Court  
20 for RGC and Robert Giardina?

21 THE COURT: Yes. That is why you are here.

22 MR. KLUGER: Yes.

23 If I may, your Honor, if it please the Court, Alan  
24 Kluger. We filed an appearance. We have been in the case less  
25 than a day. If I get too granular, stop me, but let me just

1 tell you -- you started to go down the road -- these assets  
2 were wrongfully secreted. The contract interests that counsel  
3 asserted are a sham.

4 What we have uncovered so far is the following. You  
5 touched on these. I'm sorry we filed late, but we have  
6 literally have been in the case less than 24 hours. We have  
7 been working around the clock, until 3 in the morning.

8 Between late 2018 and early 2019, my client RCG wired  
9 \$9,070,000 to their attorney, David Feingold. They signed an  
10 escrow agreement with his law firm dated December 10, 2018.  
11 There's no mention in here of Broad Street Global. There's no  
12 mention of any hedge fund.

13 What it said was that he was going to be the lawyer in  
14 paragraph 8.

15 In paragraph 5 he said he would be providing escrow  
16 services in a transaction related to the escrow arrangement and  
17 would have a limited power of attorney to execute documents to  
18 facilitate the transaction contemplated, which in paragraph 7  
19 says it's settlement of claims such as this claim that's before  
20 the Court.

21 Then what happened, and we have attached these and we  
22 filed them as composite Exhibit B, a series of wire transfers  
23 totaling the \$7 million was sent by RCG to Feingold Morgan, a  
24 law firm's trust account, and the reference on every one of  
25 these is the same, Richmond Capital escrow for litigation

1 settlement and attorneys' fees.

2 David Feingold, it's clearly obvious he is the CEO of  
3 the fund, and we have attached a private equity firm filings  
4 and what we have seen on the internet that he is the CEO.

5 So he was the lawyer, the CEO, and what he did was he  
6 used his limited power of attorney to sign a page and append it  
7 to the Broad Street general partnership agreement that gives  
8 them the right to, you know, tell investors that they can't  
9 liquidate. He signed his own name on behalf of our client on  
10 this limited power of attorney. What's fascinating is the date  
11 of that document is April 2018. The date of the escrow  
12 agreement with our client is December 2018.

13 So what he did was he appended a page to this  
14 document, used the limited power of attorney. And it's clear  
15 from the engagement that there's nothing about hedge funds.  
16 There's nothing about putting the money behind escrow. It was  
17 our client wiring his money to settle these claims so that he  
18 could pay and make deals with the FTC, the State of New York,  
19 the attorney general, etc.

20 It gets worse, your Honor, not better.

21 They said in the papers that they filed -- and I quite  
22 frankly think that counsel seeking to intervene was not shown  
23 all of these documents because he didn't reference them, and I  
24 am sure in good faith he made those allegations. They are just  
25 not true.

1           What happened was Mr. Baldassarra -- who in his  
2 affidavit positions himself as the head, is really the puppet.  
3 The head is Feingold the lawyer, who operated as the escrow  
4 agent. It is not me saying it. It is what we see online when  
5 we look at the fund.

6           There's series of e-mails that we have appended as  
7 Exhibit E, and what they say is, to the FTC, the FTC,  
8 Mr. Baldassarra gets a copy of a letter from Ms. Heald, from  
9 the FTC that says in March, "The FTC is contemplating a  
10 settlement agreement with certain defendants in which funds  
11 payable to the FTC would be held in CJS technology select  
12 management account, named" -- listen to the name of the fund --  
13 "Feingold Morgan Sanchez" -- that's Feingold's firm --  
14 "trust/escrow for the benefit of Richmond Capital."

15           She then goes on to say, "The contemplated settlement  
16 agreement provides that the defendants' payment obligations  
17 would be secured by a security interest in the above-referenced  
18 account. To the extent such account is a deposit account, the  
19 security interest would be perfected by an execution of a  
20 deposit account control agreement between the FTC Feingold  
21 Morgan Sanchez. If the account ending in 299 is a deposit  
22 account, please provide CJS technology form deposit control  
23 agreement. Please feel free to contact me."

24           Mr. Baldassarra, on behalf of this hedge fund as  
25 they call it, writes an e-mail back to the FTC on March 22 --

1 and this is important because they told you in their filings  
2 that this is the first they heard about it when they got the  
3 order.

4 He writes back: "Thank you for your e-mail.  
5 Technically I believe the account is characterized as ownership  
6 in a pooled investment fund. Let me know if I can be of any  
7 further assistance."

8 Mr. Ashe -- who is on the screen -- writes back on  
9 July 11, "Mr. Baldassarra, enclosed please find an order  
10 entered by the Court" -- that's your order -- "that ordered  
11 them to liquidate the account."

12 And then it says, "One of these people will send you  
13 appropriate wire transfer instructions. Do not hesitate to  
14 contact me."

15 And that's what they knew. Those were the documents  
16 that were sent to them. They now take the position that these  
17 funds are tied up.

18 Your Honor, something is really wrong here. I have  
19 been in the case a day. I don't know if you want me to brief  
20 it, but we never received an accounting.

21 Here's what happened.

22 Feingold says: "I am your lawyer. I owe you a  
23 fiduciary responsibility. My law firm your lawyer."

24 By the way, he doesn't say, "I am the CEO of this  
25 hedge fund that is now seeking relief here." There is nothing

1 in the letter.

2 I don't know if we can share a screen with you but it  
3 is attached to what I filed, and if you could pull it up, it's  
4 very telling. It is Exhibit A. It's Feingold's law firm's  
5 agreement.

6 There is no mention of any hedge fund or anything.  
7 They clearly were in the role that many of we lawyers have been  
8 in: "Client, you are in trouble. Give me the money. We are  
9 going to pay all your claims, get you leases. We are going to  
10 do these things. We owe you a fiduciary duty because we are  
11 your lawyer. Sign it."

12 Wires him the money. The money has a re on every  
13 single penny we sent that says this is to pay claims.

14 He then goes ahead and puts it in his own hedge fund,  
15 and now comes before you and basically claims that because he  
16 murdered his parents he is an orphan and you should have  
17 rachmanus on him.

18 Essentially that is what is going on here. I think  
19 your order was right. I think you are ordering them to  
20 liquidate the funds. I think they should liquidate the funds.  
21 They caused the problem. I think there's something totally  
22 smelly.

23 The final point, Judge, is after this whole thing  
24 comes to light, and after it's clear what's going on here and  
25 the FTC is moving ahead, Feingold resigns as escrow agent.



1 He's still CEO of the fund, but he resigns as escrow agent and  
2 we don't know where the money is.

3 We do know, and there is a document that is both I  
4 think attached to their affidavit, and we have filed a  
5 document, it's dated -- it is a statement of December 2021. It  
6 is a statement, and it is from the tech fund to Feingold Morgan  
7 Sanchez trust escrow for the benefit of Richmond Capital, and  
8 it says the ending balance is \$6,673,077.25.

9 My client gave the money to his lawyer to help get him  
10 out of trouble with all the regulatory agencies he was trying  
11 to settle with. That's why he put the money beyond his  
12 control. He didn't intend to put the money beyond the control  
13 of the creditors that are entitled to this money.

14 THE COURT: Okay. Thank you, Mr. Kluger.

15 Mr. Ashe, anything you want to add?

16 MR. ASHE: The only thing I would add, I just -- sort  
17 of, you know, when we went forward with the settlement, there  
18 was additional language in the e-mail response from  
19 Mr. Baldassarra of the fund. He mentions, he goes, "Broad  
20 Street brought is a fund, not a bank. Pointing out the  
21 distinction however" -- I'm quoting from the e-mail. And this  
22 is in the defendants' recent filing, the document 150 at page  
23 28.

24 He goes, "We are aware of your proposed settlement, do  
25 have the assets associated to your referenced account, and

1 believe they will be able to satisfy the proposed amounts of  
2 the settlement and are happy to execute any such documents  
3 needed to achieve your goal and the settling parties' goals."

4           So really I think the FTC's position is, I guess most  
5 analogous, although it is not the perfect analogy, to almost  
6 like interpleader.

7           You know, we know this money is available. You know,  
8 we believe, you know, we and, you know, the defendants entered  
9 into good faith with the settlement.

10           I do note, in terms of timing issues, you know, it's  
11 \$1.5 million which is sort of due now under the way the order  
12 is structured. And the remainder of that, of the settlement  
13 order is not due until, by my calculation, June '23, which is  
14 six months after this, what they call the lockup or lockout  
15 date. So we do note that.

16           In terms of the intervention, we really take no  
17 position on that. Obviously, you know, we do think that CJS  
18 should, you know, should be, you know, entitled to at least  
19 address its claims.

20           But in terms of the merits, we would agree with the  
21 defendants that, you know, the Court's order should remain in  
22 place, and it looks at least with respect to the securities  
23 fund, you know, I guess, based on my limited understanding of  
24 the finances, that that could be, you know, liquidated in  
25 accordance with the Court's order, turned over to the

1 defendants' counsel to begin satisfying the remainder of their  
2 obligations under the settlement and would defer to smarter  
3 people as to what to do with the real estate fund, at least in  
4 the short term, since, you know, the balance of the settlement  
5 judgment really would not be due until the earlier of June 2023  
6 or, going into details of the order, when RCG and the New York  
7 Attorney General's office resolve their state court litigation.

8 THE COURT: Mr. Ashe, did the commission know about  
9 this bundle of money that we are now dealing with?

10 Did you have what you regard as full disclosure of the  
11 settling defendants' assets?

12 MR. ASHE: Yes.

13 In the financial statements they indicated that they  
14 had approximately \$8 million in client trust account. I think  
15 there was a little uncertainty as to where that trust account  
16 was located. Initially it was the understanding that, you  
17 know, it was at the securities fund. That's why we first  
18 reached out to the securities fund.

19 Later, when we were putting together the actual, you  
20 know, final language of the order, it was disclosed that the  
21 RGC counsel was in the process of transferring it from the CJS  
22 to Mr. Iandolo, who was one of RCG's counsel in this matter,  
23 into his client trust account to make it easier to get the  
24 payments done.

25 So that's why the settlement that we submitted to the

1 Court has payment coming from Mr. Iandolo's trust fund account.  
2 It was our understanding that money was going to be  
3 transferred. I believe -- and I don't want to speak for the  
4 defendants -- they thought that they would have no issue  
5 liquidating the position and bringing it over to Mr. Iandolo's  
6 account.

7 THE COURT: So this is not a situation, so far as the  
8 commission knows, where this money went into the escrow account  
9 to obscure its existence from the government?

10 MR. ASHE: I mean, we filed our action in 2020. We  
11 know this action -- I mean, the money was transferred in 2018.  
12 I do know -- certainly that's pointed out in our summary  
13 judgment papers against the remaining defendant Braun, that  
14 there was at least investigational matters with the New York  
15 Attorney General's office, and I really can't speak to, you  
16 know, what that money was used for.

17 I take, you know, the defendants' statement on their  
18 word that they, you know, this pot of money was to satisfy, you  
19 know, judgments. I know they have been negotiating in good  
20 faith with us, and we don't have any, any issue with that.

21 You know, I can't speak as to, you know, I know they  
22 have a number of other litigations. You know, we don't think  
23 they are trying to hide it from us. They disclosed that they  
24 had this trust fund, a client trust account of \$8 million, and  
25 that was the basis on which we negotiated our settlement.

1 THE COURT: Okay. That's helpful.

2 All right. What remaining briefing does anyone wish  
3 to conduct here?

4 MR. KLUGER: So, your Honor, I think we would want to  
5 just -- I think there is enough for the Court to rule on. If  
6 the Court wishes, what we would do is we do limited discovery,  
7 and then file a brief with the Court to show the Court the bona  
8 fides of RCG's sending of this money, put in the record all of  
9 the transfers we made, show the terms of the transfer to the  
10 lawyers.

11 Feingold is on the hot seat. I just think he took the  
12 money. He's got a whole bunch of stuff going on. I think the  
13 Court should be aware of it. I proffer to the Court what we  
14 have been able to -- he's been sued with an \$18 million IRS  
15 judgment, he's been sued by various people over the years.  
16 He's had issues.

17 He is an attorney that plays in this space, and I  
18 think that he just took our client's money, used it for an  
19 investment that we know that that fund supposedly, according to  
20 his own records, has \$38,200,000 of invested assets of which  
21 our piece is just a portion. And I am sure he makes money on  
22 the hedge. He had no right to take our money and put it beyond  
23 us.

24 What I would ask the Court to do, because it is very  
25 telling, is look at the December 10, 2018, our Exhibit A that

1 we filed this afternoon. It is the retention by my client RCG  
2 and Robert Giardina where he says exactly what he intends to  
3 do, why he's sending the money, and the lawyer undertaking his  
4 fiduciary responsibility.

5 Why he did what he did, I have no idea. But the fund  
6 is complicit. They can't hide behind Baldassarra because the  
7 CEO of the fund is the same guy who signed the escrow agreement  
8 on behalf of the law firm. He's the first named partner. It's  
9 his law firm.

10 MR. WELTZ: Your Honor, may I briefly reply?

11 THE COURT: Who is speaking?

12 MR. WELTZ: It's Mr. Weltz, your Honor. Irwin Weltz.

13 May I briefly respond to some of this argument,  
14 because what I am hearing now is very damaging to Mr. Feingold  
15 who apparently was doing fine and dandy with these folks for I  
16 guess the past four years.

17 I think there is another side to this story, but to  
18 accuse Mr. Feingold of essentially theft without an affidavit,  
19 without anything and just conjecture, is just inappropriate.

20 I too have been involved in this case for a very short  
21 period of time, as my clients only received that, the order,  
22 the liquidation order on July 11. But I am certain  
23 Mr. Feingold would have something to say about these  
24 allegations that are being made against him in his absence.

25 The other thing I would like to point out is the

1 motion that was made jointly by the FTC and the RCG defendants  
2 actually notes that there is a dispute here. They don't say  
3 that, oh, my clients agreed, as they're saying now based on  
4 these e-mails I am now seeing.

5 They don't address the fact that there are e-mails  
6 reflecting that dispute in writing. I think if we had an  
7 opportunity to, number one, respond to whatever affidavits that  
8 the RCG defendants want to put in, I think we would be able to  
9 explain a little bit of the disconnect here that's being  
10 portrayed.

11 But at the end of the day I think my clients  
12 understood that the amount of money that would be taken by the  
13 FTC would not exceed the money that was wired to the RCG  
14 defendants in April of 2022, which was about one point, I think  
15 three three million. So I do think perhaps both sides could  
16 use supplemental submissions.

17 The other point I would like to make, your Honor, is  
18 that in the agreement that they point to, with respect to this  
19 escrow agreement, they only point to a couple of provisions.  
20 Two of the things they omit -- I am sure not intentionally --  
21 but that was in the sixth -- under the quote-unquote sixth  
22 paragraph it discloses that the attorneys here who are handling  
23 this trust can act in the present or future one or more  
24 parties' managers or affiliates or owners, direct, indirect, in  
25 the transaction, etc.

1           And to suggest that over the course of four years, as  
2 I think the suggestion is being made, that my client somehow  
3 hid from these folks what was going on with this money that was  
4 apparently so vital to them strains credulity. I think we will  
5 be able to dispute that resolutely.

6           The other point I would like to make is that in the  
7 seventh paragraph, it refers specifically -- it says, "We are  
8 further authorized to place the money in an interest bearing  
9 account, fund, or investments during the term of this escrow  
10 relationship," you know, and so forth.

11           So the escrow agreement itself provides for the  
12 ability of Mr. Feingold, his firm, etc., to make investments,  
13 which would make sense, right? Because nobody wants money to  
14 be just languishing around in a trust account, especially this  
15 sum of money.

16           THE COURT: To make investments in a fund of which he  
17 is the CEO?

18           MR. WELTZ: I understand, your Honor. Obviously it  
19 would be up to the parties to get to the bottom of that. It  
20 was a little bit beyond the scope as, at least from my  
21 perspective, as what I saw was involved here. And it appears  
22 to me -- and I think there is a larger dispute brewing between  
23 obviously RCG and Mr. Feingold and perhaps their affiliates and  
24 so forth, but I am not sure that in the midst of this FTC  
25 action is the place to bring that dispute, because this



1 dispute --

2 THE COURT: We are in a "Go Luxembourg" moment.

3 MR. WELTZ: It is very serious, though, when somebody  
4 makes an accusation about a lawyer. I understand that counsel  
5 is new to the case, and I understand that he wants to represent  
6 his client zealously, but at the same time to make those types  
7 of allegations without the opportunity to be heard on the other  
8 side and quite frankly without an affidavit --

9 THE COURT: You are going to have an opportunity. It  
10 just not going to be now.

11 MR. WELTZ: Thank you, your Honor.

12 So I would say, you know, net net, putting aside the  
13 various different strands of what appears to be a larger  
14 dispute, the issue here, as I would ask the Court to review it,  
15 is whether or not our contractual redemption rights permit us  
16 to say to Mr. Giardina and RCG, "Hey, we gave you the amount  
17 that you were entitled to receive for this year, the \$1.3  
18 million. Come back to us in six months, and you will be able  
19 to get the other half."

20 It would be, quite frankly, unfair for my client to be  
21 required to essentially allow this limited investor -- and,  
22 quite frankly, not others -- simply because they have taken  
23 this circuitous route. We did not get notice about this motion  
24 or this order.

25 Quite frankly, I don't blame the FTC. I am not sure

1 whether they have been parties or involved in all of the phone  
2 calls and so forth that have gone on between I guess my side  
3 and the other side.

4 THE COURT: Mr. Weltz, I have your point.

5 MR. WELTZ: I apologize, your Honor.

6 THE COURT: Mr. Kluger, how much time do you want to  
7 make a further submission?

8 MR. KLUGER: Are you going to allow us to take  
9 discovery, or do you want us to do it just on the documents we  
10 have?

11 THE COURT: I will allow you a limited amount of  
12 discovery.

13 How about 30 days?

14 MR. KLUGER: 30 days is fine. If we say 41, to be  
15 exact, by the end of August, with people's vacation  
16 calendars -- not mine, but others -- we will take the  
17 discovery, we will do it by Zoom, we will get the documents we  
18 need, and we will get it all before you by the end of August.

19 THE COURT: Okay. August 31 it is.

20 How much time, Mr. Weltz, do you want to reply to  
21 whatever is coming up?

22 MR. WELTZ: When would that be coming in? I guess  
23 August 31?

24 MR. KLUGER: Yes.

25 THE COURT: Yes.

1 MR. WELTZ: What would your Honor, would two weeks or  
2 21 days be appropriate?

3 We would also like to take discovery as well during  
4 that period of time.

5 THE COURT: Go ahead.

6 Okay. September 21 for your papers.

7 Anything else?

8 MR. KLUGER: No, your Honor.

9 Thank you for seeing us on short notice.

10 MR. WELTZ: Your Honor, we will agree to meet and  
11 confer with Mr. Kluger in good faith about the various parties  
12 who will be deposed, etc., and the documents and so forth.

13 THE COURT: I hope so. Okay.

14 Bye-bye.

15 (Adjourned)